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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-458

13 **WAYNE ALAN WINTER**  
14 **2326 Toledo Avenue S.**  
15 **Palm Springs, CA 92264**

**A C C U S A T I O N**

16 **Registered Nurse License No. 688850**

Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about September 15, 2006, the Board of Registered Nursing issued Registered  
23 Nurse License Number 688850 to Wayne Alan Winter (Respondent). The Registered Nurse  
24 License was in full force and effect at all times relevant to the charges brought herein and will  
25 expire on April 30, 2014, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 2811(b) states:

Each such license not renewed in accordance with this section shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee required by this chapter and upon submission of such proof of the applicant's qualifications as may be required by the board, except that during such eight-year period no examination shall be required as a condition for the reinstatement of any such expired license which has lapsed solely by reason of non-payment of the renewal fee. After the expiration of such eight-year period the board may require as a condition of reinstatement that the applicant pass such examination as it deems necessary to determine his present fitness to resume the practice of professional nursing.

## STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

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1       8.     Section 490 of the Code provides, in pertinent part, that a board may suspend or  
2     revoke a license on the ground that the licensee has been convicted of a crime substantially  
3     related to the qualifications, functions, or duties of the business or profession for which the  
4     license was issued.

5       9.     Section 493 of the Code states:

6             Notwithstanding any other provision of law, in a proceeding conducted by a  
7     board within the department pursuant to law to deny an application for a license or  
8     to suspend or revoke a license or otherwise take disciplinary action against a person  
9     who holds a license, upon the ground that the applicant or the licensee has been  
10    convicted of a crime substantially related to the qualifications, functions, and duties  
11    of the licensee in question, the record of conviction of the crime shall be conclusive  
12    evidence of the fact that the conviction occurred, but only of that fact, and the board  
13    may inquire into the circumstances surrounding the commission of the crime in  
14    order to fix the degree of discipline or to determine if the conviction is substantially  
15    related to the qualifications, functions, and duties of the licensee in question.

16            As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
17    'registration.'

18       10.    Section 2761 of the Code states:

19            The board may take disciplinary action against a certified or licensed nurse  
20    or deny an application for a certificate or license for any of the following:

21            (a) Unprofessional conduct, which includes, but is not limited to, the  
22    following:

23            ...

24            (f) Conviction of a felony or of any offense substantially related to the  
25    qualifications, functions, and duties of a registered nurse, in which event the record  
26    of the conviction shall be conclusive evidence thereof.

27            ....

28       11.    Section 2762 of the Code states:

          In addition to other acts constituting unprofessional conduct within the  
          meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a  
          person licensed under this chapter to do any of the following:

          ....

          (b) Use any controlled substance as defined in Division 10 (commencing with  
          Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
          device as defined in Section 4022, or alcoholic beverages, to an extent or in a  
          manner dangerous or injurious to himself or herself, any other person, or the public  
          or to the extent that such use impairs his or her ability to conduct with safety to the  
          public the practice authorized by his or her license.

1 (c) Be convicted of a criminal offense involving the prescription,  
2 consumption, or self-administration of any of the substances described in  
3 subdivisions (a) and (b) of this section, or the possession of, or falsification of a  
4 record pertaining to, the substances described in subdivision (a) of this section, in  
5 which event the record of the conviction is conclusive evidence thereof.

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**REGULATORY PROVISIONS**

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

13. California Code of Regulations, title 16, section 1445(b), states:

When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

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## COST RECOVERY

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## FIRST CAUSE FOR DISCIPLINE

### **(January 27, 2012 Criminal Conviction for DUI and for Driving With Blood Alcohol Content of 0.08% or Higher [0.20%] on September 5, 2010)**

15. Respondent is subject to disciplinary action under Code sections 490 and 2761(f) of the Code in that Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

16. On or about January 27, 2012, in a criminal proceeding entitled *People of the State of California v. Wayne Alan Winter*, in the Riverside County Superior Court, in Case No. INM 1104128, Respondent was convicted on his plea of guilty, of violating Vehicle Code sections 23152(a) (DUI) and 23152(b) (driving with a blood alcohol content of 0.08% or more [0.20%]), misdemeanors. Respondent admitted an enhancement pursuant to Vehicle Code section 23578 (concentration of blood alcohol content of 0.15% or more).

17. As a result of the above conviction, the Court placed Respondent on three (3) years summary probation and ordered him to serve 15 days in the Riverside County Jail, with sentence suspended. The Court also ordered Respondent to pay various fines and fees, obey all laws, ordinances and court orders, not drive with any measurable amount of alcohol or drugs in his blood or within 6 hours of consuming any alcohol or drugs, to submit to any blood, breath, or urine test as requested by law enforcement officers, not drive unless properly licensed nor without insurance, attend and satisfactorily complete a first offender DUI program for 3 months (over 0.20% BAC), and submit to chemical tests of blood, saliva, breath or urine or any reasonable physical test upon request of probation or any law enforcement officer.

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1           18. The circumstances that led to Respondent's conviction are that on September 5, 2010,  
2 at approximately 10:30 p.m., Palm Springs Police Department Officers responded to a call of a  
3 collision with injuries at the intersection of Sunny Dunes and S. Palm Canyon. Upon arrival, they  
4 made contact with Respondent who told officers he was the driver and sole occupant of a silver  
5 Smart car. When officers asked Respondent what happened, Respondent stated, "I don't know,  
6 I'm not sure where I was coming from or going to, all I know is that I have had too much to  
7 drink." While speaking to Respondent, officers detected a strong odor of an alcoholic beverage  
8 emitting from his breath and person and noticed Respondent's speech was heavily slurred.  
9 Respondent complained of pain to his entire body and was unable to provide any more  
10 information as he was being attended by medical staff on the scene. The driver of the second  
11 vehicle, G.K., told officers that just as his vehicle entered the intersection on a green light,  
12 Respondent's vehicle entered the intersection while running a red light and that G.K.'s vehicle  
13 struck Respondent's vehicle on the passenger side door, with both vehicles coming to a stop in  
14 the middle of the intersection. G.K. complained of pain to his back and chest.

15           19. Based on officers observations of Respondent being under the influence of an  
16 alcoholic beverage and Respondent's admission to officers of drinking and driving, officers  
17 placed Respondent under arrest for DUI. Respondent was transported to Desert Hospital where a  
18 nurse extracted one vial of blood from Respondent's arm for analysis. Officers issued  
19 Respondent a citation for DUI. Respondent's blood alcohol content was analyzed at 0.20% BAC.

#### 20                           **SECOND CAUSE FOR DISCIPLINE**

#### 21                           **(Unprofessional Conduct - Use of Alcohol in a Manner Dangerous** 22   **or Injurious to Self or Others)**

23           20. Respondent is subject to disciplinary action under Code section 2761, subdivision (a)  
24 on the grounds of unprofessional conduct as defined by Code section 2762, subdivision (b), in  
25 that on May 1, 2002 and September 5, 2010 he used alcohol to an extent or in a manner that was  
26 dangerous to himself and the public, as set forth in paragraphs 15-19, above, and paragraph 26,  
27 below, which are incorporated here by reference.  
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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Conviction of an Alcohol Related Crime)**

3 21. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),  
4 on the grounds of unprofessional conduct as defined by Code section 2762, subdivision (c), in  
5 that on October 17, 1996, July 3, 2002, and January 27, 2012, he was convicted of criminal  
6 offenses involving the consumption of alcohol, as set forth in paragraphs 15-19, above, and  
7 paragraphs 25 and 26, below, which are incorporated here by reference.

8 **DISCIPLINARY CONSIDERATIONS**

9 22. To determine the degree of discipline, if any, to be imposed on Respondent for the  
10 violations alleged above, pursuant to California Code of Regulations, title 16, section 1445,  
11 Complainant alleges:

12 23. On or about December 8, 1992, in a criminal proceeding entitled *State of Minnesota*  
13 *v. Wayne Alan Winter*, in the Minnesota District Court, Hennepin County, in Case  
14 No. 93-031315, Respondent was convicted on his plea of guilty of hit and run ["to attended  
15 vehicle"]. As a result of the conviction, Respondent was ordered to serve 30 days in the county  
16 jail, stayed for one year, and ordered to pay various fines and fees.

17 24. On or about November 12, 1993, in a criminal proceeding entitled *State of Minnesota*  
18 *v. Wayne Alan Winter*, in the Hennepin District Court, Ramsey County, in Case No. 93-100684,  
19 Respondent was convicted on his plea of guilty of invasion of privacy. As a result of the  
20 conviction, Respondent was ordered to serve 10 days in the county jail, stayed for one year,  
21 ordered to pay various fines and fees, and ordered to attend counseling. On May 5, 1994, an  
22 arrest and detention order was filed for failure to attend counseling at community health. On  
23 June 1, 1994, the arrest and detention order was quashed and Respondent was ordered to resume  
24 counseling attendance.

25 25. On or about October 17, 1996, in a criminal proceeding entitled *State of Minnesota v.*  
26 *Wayne Alan Winter*, in the Minnesota District Court, Ramsey County, in Case No. 96-047304,  
27 Respondent was convicted on his plea of guilty, of violating Minnesota Statute 169.121 (DUI  
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1 with blood alcohol content of 0.10% or higher). As a result of the above conviction, the Court  
2 placed Respondent on one year probation and ordered him to pay various fines and fees.

3 26. On or about July 3, 2002, in a criminal proceeding entitled *State of Florida v. Wayne*  
4 *Alan Winter*, in the State of Florida County Court in and for Broward County, in Case  
5 No. 0599590, Respondent was convicted on his plea of guilty, of violating Florida Statute  
6 316.193 (DUI). As a result of the above conviction, the Court placed Respondent on nine (9)  
7 months probation and ordered him to serve 10 days in the Broward County Jail, with 3 days credit  
8 for time served, attend DUI School Level 2, attend 108 AA meetings during probationary period,  
9 pay various fines and fees, and suspended his driver's license for 6 months.

10 A. The circumstances are that on May 1, 2002, at approximately 11:00 p.m., Broward  
11 County, Florida Police Officers responded to a report of a traffic collision. Upon arrival,  
12 responding officers found out that while Ft. Lauderdale officers were directing traffic, they  
13 observed Respondent side swipe a marked police unit and continued driving. Officers gave chase  
14 and stopped Respondent's vehicle. When officers made contact with Respondent, they detected  
15 an odor of an alcoholic beverage about his breath and noticed his eyes were glassy, red,  
16 bloodshot, his speech slurred and was unable to concentrate or follow instructions. Respondent  
17 was arrested for DUI and submitted to a breath test which resulted in a reading of 0.24% BAC.

#### 18 PRAYER

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
20 and that following the hearing, the Board of Registered Nursing issue a decision:

21 1. Revoking or suspending Registered Nurse License Number 688850 issued to Wayne  
22 Alan Winter;

23 2. Ordering Wayne Alan Winter to pay the Board of Registered Nursing the reasonable  
24 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
25 Code section 125.3;

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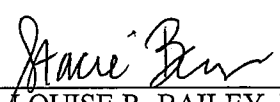
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3. Taking such other and further action as deemed necessary and proper.

DATED: DECEMBER 8, 2012

*for*   
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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